



In the Matter of

VENABLE FARMS

LASLEY FARMS

Petitioners

Date Issued: APR 16 1990

Case No. 90-TLC-18

v.

U.S. DEPARTMENT OF LABOR

Respondent

DECISION AND ORDER

Employers seek administrative review of denials of emergency applications for labor certification to admit temporary foreign agricultural tobacco workers. Employers' applications submitted March 15, 1990, specified April 23, 1990, as the date of need.

Jurisdiction to entertain these appeals is predicated upon 20 CFR §655.101(f). The employers are pursuing both a modification of their applications before the Regional Administrator, (RA) and an appeal of the RA's denial of their emergency petitions for waiver before this office.

The employers failed to file their applications 60 or more days prior to the date the workers were needed, and thus failed to comply with 20 CFR §655.101(c)(1).

Employers allege, however, that an emergency situation arose when workers they had previously employed failed to contact them for work this season, and employers were otherwise unaware of the 60-day filing requirement.

The appeal file does not identify the domestic workers previously employed, and the employers advise that they are unable to contact the workers. Consequently, assuming weather conditions this year resulted in a 1-2 week earlier transplanting season, the employers fail to explain how they intended to communicate this to prior workers whom they are unable to contact. Weather apparently was not an unusual factor in the timing of Employers' labor needs.

The record further fails to identify the workers whom the growers allegedly expected to return. Therefore, the notion that the workers should have but did not contact the workers could not be verified with the workers by the RA.

The failure of former employees to contact employers, in this instance, on this record, is not good or substantial cause for granting a waiver. The employer ordinarily should determine the availability of prior workers in time to permit compliance with the 60-day deadline. Lack of familiarity with the 60-day filing requirement is not good and substantial cause for

non-compliance with the minimum application period. Under these circumstances, the non-return of workers used in past seasons does not relieve employers of the obligation adequately to test the U.S. labor market to determine the availability this season of other U.S. workers.

The circumstances alleged fail to establish an emergency situation within the meaning of 20 CFR §655.101(f)(2).

The employers therefore have failed adequately to test the availability of U.S. workers, (20 CFR §655(c)(1); and accordingly, the denials of emergency waivers by the Regional Administrator are hereby, AFFIRMED.

STUART A. LEVIN
Administrative Law Judge

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